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**MAR 21 2006**

**OFFICE OF PETITIONS**

In re Application of :  
Kimble et al. : DECISION DISMISSING  
Application No. 09/775,692 : PETITION  
Filed: 2 February, 2001 :  
Atty Docket No. 50N3463.01 :

This is a decision on the petition under 37 CFR 1.137(b),<sup>1</sup> filed on 30 January, 2006.

The petition is **DISMISSED**.

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<sup>1</sup> Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

The application became abandoned on 3 August, 2005, for failure to file a timely reply to the final Office action mailed on 2 May, 2005, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. The filing of the present petition precedes the mailing of Notice of Abandonment.

In the absence of the petition fee, which is required by law, the USPTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment. As petitioner has not asserted any grounds for the withdrawal of the holding of abandonment, the petition must be dismissed.

The PTO will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.<sup>2</sup>

While the petition requests that the petition fee be charged to counsel's deposit account, No. 50-1119, a review of Office financial records reveals that counsel's deposit account has a balance of \$100.00 on 31 January, 2006. An amount sufficient to cover all fees, services, copies, etc., requested must always be on deposit. Charges to accounts with insufficient funds will not be accepted.<sup>3</sup>

The address in the petition is different from the correspondence record. A copy of this decision is being forwarded to the address in the petition. All future correspondence will be mailed solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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<sup>2</sup> See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

<sup>3</sup> 37 CFR 1.25.

By FAX: (571)273-8300  
Attn: Office of Petitions

By hand: Customer Service Window  
Mail Stop Petition  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

Telephone inquiries should be directed to the undersigned at 571-272-3231.



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